



The New York Times
Company

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VIA ECF

The Honorable Lorna G. Schofield
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *The New York Times Company, et al. v. Federal Communications
Commission, 18-cv-8607 (LGS)*

Dear Judge Schofield:

I am counsel for Plaintiffs The New York Times Company, Nicholas Confessore, and Gabriel Dance (collectively, “The Times”) in the above-referenced action and write on behalf of both Plaintiffs and Defendant. As the Court knows, Defendant Federal Communications Commission (“FCC”) has withdrawn its appeal of this Court’s April 30, 2020, judgment. The parties now seek a briefing schedule for The Times’s anticipated motion for fees under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

Through this action, The Times has sought the release of records related to the 2017 notice-and-comment process for the FCC’s proposal to repeal rules mandating “net neutrality.” (See Dkt. 1.) On April 30, 2020, this Court granted The Times’s motion for summary judgment and found the records not exempt from disclosure under FOIA. (Dkt. 33.) The Court’s opinion did not address the merits of The Times’s motion for attorneys’ fees under 5 U.S.C. § 552(a)(4)(E); because the parties had “not briefed the issue,” the Court denied the motion “without prejudice to renew the request.” (*Id.* at 16.)

On May 7, 2020, the Court granted The Times's request for an extension of time to file a renewed motion for attorneys' fees and costs. (Dkt. 36.) The Court's order made the motion due "30 days after either the time for any appeal has lapsed or there is a final determination by the Second Circuit of Appeals." (Dkt. 36.) The Second Circuit issued its final determination on September 28, 2020, when it so-ordered the parties' stipulation withdrawing the appeal.

The parties hope that they will be able to negotiate a resolution of the fees issue without motion practice. However, in the event that motion practice becomes necessary, the parties jointly propose the following schedule: The Times's motion will be filed on or before November 25, 2020. The FCC will respond on or before December 23, 2020, with The Times's reply due on January 6, 2021.

We thank the Court for its attention to this matter.

Respectfully submitted,

 /s/
David E. McCraw

cc: Tomoko Onozawa, AUSA
(via ECF)